

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TYRONE BATTLE,

Plaintiff,

No. Civ. S-02-0029 JAM EFB P

vs.

LOUISE PRINTZ, M.D., et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

On January 7, 2002, plaintiff commenced this action alleging that defendants violated his civil rights. *See* 42 U.S.C. § 1983. On May 12, 2008, the remaining defendant in this action notified the court of plaintiff's death by filing a notice of suggestion of death upon the record. Once such a notice is filed, a person who wishes to substitute for the deceased has 90 days to file a motion to be substituted as the plaintiff. Fed. R. Civ. P. 25(a)(1). Dismissal is mandatory if no such motion is filed within the 90-day period. *Id.*

On May 19, 2008, Andrea Haygood filed a letter with the court, which the court construed as a motion for substitution pursuant to Rule 25. The motion did not, however, provide enough information regarding who was the proper party for substitution. Accordingly, on March 19, 2009, the court ordered Haygood to show cause on or before May 15, 2009, why the decedent's claims should not be dismissed because Haygood had not shown that she (or her

1 brother) is the personal representative or successor in interest of the decedent's estate. The Clerk
2 of the Court served a copy of the court's order on Haygood at the address provided in her May
3 19, 2008 letter.

4 The May 15, 2009 deadline has passed, and Haygood has not responded to the court's
5 order to show cause or otherwise corrected the deficiencies in her motion for substitution.

6 Accordingly, it hereby is RECOMMENDED that this action be dismissed. *See* Fed. R.
7 Civ. P. 25(a)(1). The Clerk is directed to serve a copy of these findings and recommendations on
8 Ms. Haygood at the address provided on her letter filed May 19, 2008.

9 These findings and recommendations are submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty days
11 after being served with these findings and recommendations, any party may file written
12 objections with the court and serve a copy on all parties. Such a document should be captioned
13 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
14 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
15 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

16 Dated: June 11, 2009.

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19 EDMUND F. BRENNAN
20 UNITED STATES MAGISTRATE JUDGE
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